

REMARKS-General

Please see that the corrected title is:

Title: Ultra-High Fiber Supplement And Methods Of Reducing Weight, Cardiovascular Risks,
And Ingested Toxins.

Explanation of Claims

Claims 1-23 previously cancelled

Claims 42-63 previously withdrawn

Claim 24 currently amended

Claim 25 previously presented.

Claim 26 currently amended

Claim 27 previously amended

Claim 28 currently amended

Claims 29 currently amended

Claim 30 previously amended

Claims 31-32 previously presented

Claim 33 previously presented

Claim 34 currently amended

Claim 35 previously presented

Claim 36 previously amended

Claim 37 currently amended

Claim 38 currently amended

Claim 39 currently amended

Claim 40 previously amended

Claim 41 currently amended

Claims 42-63 previously withdrawn

Claim 64 currently amended

Claim 65 currently amended

Claim 66 currently amended

Claim 67 currently amended
Claim 68 previously presented
Claim 69-70 currently amended
Claim 71 currently amended
Claim 72 currently amended
Claim 73 previously presented
Claim 74 currently amended
Claim 75 new independent

Applicant has been careful not to add new matter, and has provided direction to examiner by listing page numbers in original application to verify that information added was in original application.

Applicant thanks examiner for phone conversations and assistance. Applicant very much appreciates time and advice given by examiners, and appreciates that examiners stated they would work with applicant after receiving the amendment to achieve success at obtaining a patent.

THE TECHNICAL REJECTIONS OF THE CLAIMS HAVE BEEN OBVIATED

All Claims have been rewritten to define the invention more particularly and distinctly so as to overcome the technical rejections and define the invention patentable over the prior art.

THE CLAIM OBJECTIONS UNDER DOUBLE PATENTING HAVE BEEN OBVIATED

Claims 37-41 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 10/704,308. Though the claims were not identical, the examiner noted that the claims were not

patentably distinct from each other because they both encompassed treating diet-related cancers by administering the same composition.

Applicant has removed the reference to “diet-related cancers” from independent claim 37 and seeks to pursue these claims through copending Application No. 10/704,308. Claims 38-41 are dependent on claim 37 and contain no reference to “diet-related cancers”.

Applicant has now complied with Examiner’s advice and has removed the language that was regarded as provisional obviousness-type double patenting. Therefore, the claim objections to claims 37-41 under double patenting have been obviated.

Accordingly applicant submits that the specification does comply with double patenting rules and therefore requests withdrawal of all rejections.

THE CLAIM OBJECTIONS UNDER 35 USC §112 HAVE BEEN OBVIATED

Applicant requests reconsideration and withdrawal of the claim objections to claims 34, 41, 69, 74.

Claims 34, 41, 69, 74 were rejected for being indefinite, because they used the phrase “such as”. This phrase has been removed. Examiner also objected to the terms “plant compounds”, “orally consumed substances that induce weight loss” and “synthetic compounds” these have all been removed.

Claims 34, 41, 69, and 74 are currently amended. Examiner stated that the terms “plant derived compounds”, “synthetic orally absorbable nontoxic compounds” and “orally consumed substances that induce weight loss” rendered the claim indefinite. These phrases have been removed in order to make the claim definite. Applicant points out for Examiner’s benefit that

the ingredients listed in these claims can be found in the specification pages 21-23. The addition of exact plant or synthetic compounds as listed in the specification has made the claim quite lengthy. Applicant requests constructive assistance to rewrite the claim in a shorter and more general description that is satisfactory to the examiner and the applicant.

Claims 34, 41, 69, 74 states “stimulants, thermogenics, lipogenesis inhibitors,” as part of the claim. Applicant points out for Examiner’s benefit that these terms are supported by the specification on pages 50-51. The compound “epigallocatechin-3-O-gallate” was added back in and is supported by specification on (p. 21). In addition, “glutathione peroxidase, superoxide dismutase lipotropics, phosphatidyl choline, methionine, tumeric, wall germander and Oregon grape root” have been added back into these claims as they were listed in the original specification on (p. 20, 51). If Examiner believes this negatively affects the claim as making it confusing or indistinct, applicant agrees to drop the amended terms. If for any reason examiner objects to claim 34, 41, 69, or 74, Applicant requests constructive assistance in rewriting the claims so they are mutually acceptable to both the examiner and applicant.

Applicant does not believe any terms are duplicative in claims 34, 41, 69, 74. For example green tea is added for emphasis over teas, and tea polyphenols. The terms tumeric, curcuma, and curcumin are listed in these claims and refer to different plant compounds. If examiner disagrees that these terms are duplicative, confusing or indefinite, applicant requests constructive assistance to make these claim patentable.

Accordingly applicant submits that the specification does comply with § 112 and therefore requests withdrawal of all rejections.

THE REJECTION OF CLAIMS 24-27, 29-31, and 34-36 UNDER SEC. 102 (b) IS OVERCOME.

THE CLAIM OBJECTIONS UNDER 35 USC§102 ON RINGE HAVE BEEN OBVIATED

Claims 24-27, 29-31, and 34-36, were rejected as being anticipated by Ringe (US Patent 5,026,689) under 35 USC §102

Applicant understands from phone discussions with Examiner that Applicant's invention as a liquid and semisolid (beverage and pudding) are novel over prior art. Applicant notes examiner feels Ringe Ready to Eat Cereal (solid) invention anticipates certain claims of applicant's invention. Applicant appreciates Examiner informing him that the claim for solid is delaying the patent and can be resubmitted at a later time. Therefore, applicant is withdrawing solid claims and will reapply with an amendment to the divisional patent that has been filed, patent in continuation, or patent in part. Applicant therefore has taken Examiner's advice and amended claims 24-27, 29-31, and 34-36 to specify liquid or semisolid food products and to remove references to solid food products.

Claim 24 now adds the phrase "admixed with at least one potable liquid to create a beverage."

Claim 29 refers to the invention as an edible food product in the form of a semisolid (pudding.) Applicant points out that this is supported by the original specification on page 53 lines 6-9 reprinted here for Examiner's benefit. "The supplement can be delivered as a comestible in a form selected from the group consisting of liquids, semi-solids and solids (Example 14). Snack bars and puddings are two alternative forms to the beverage." (p 53 lines 6-9).

Examiner stated that Claim 24 would be approved if invention was a liquid beverage. Applicant has amended claim 24 to be a liquid beverage. Examiner previously rejected the dependent claims that followed claim 24 (that did not specify a liquid invention) because Examiner felt that claim 24 as a solid comestible was anticipated by Ringe. Applicant appreciates Examiner informing applicant by phone that the dependent claims for 24 would be allowed if claim 24 was changed to a liquid invention. Applicant has changed claim 24 to be a liquid beverage at examiner's request. Applicant now believes dependent claims 25-36 objections are overcome and thus allowable. In the event Examiner believes some claims are objectionable Applicant requests constructive assistance to rewrite the claims in a manner that is satisfactory to the examiner and the applicant.

Claims 37,40-41, 65, 67-70, and 72-74 were rejected as being anticipated by Ringe (US Patent 5,026,689) under 35 USC §102

Claims 37, 40-41, 65, 67-70, and 72-74 were rejected as being anticipated by Ringe for the same reason as above. Examiner felt that Applicant's invention as a solid comestible was anticipated by Ringe.

Applicant has amended claims 37, 40-41, 65, 67-70, and 72-74 so as to show that applicant's invention is a liquid or semisolid but not a solid comestible.

Claim 37 a method claim for improving the health of a mammal was rejected as anticipated by Ringe. Applicant appreciates Examiner's phone conversation that this claim would be patentable if the invention was a liquid. Applicant has followed Examiner's advice and amended the claim to be a liquid beverage method. Applicant understands that this change makes the claim allowable and obviates the objection.

Applicant also notes that improving the health of a mammal includes the medical condition "cardiovascular diseases". Applicant does not believe this is double patenting with claim 65. If Examiner disagrees, then applicant wishes to drop the medical condition "cardiovascular diseases" in claim 37 and continue with claim 65.

Claim 37, "improving" at least one medical condition replaces "treating" at least one medical condition. Applicant believes this is definite, if Examiner disagrees, he may replace "improving" with "treating".

Claims 40-41 were dependent on rejected claim 37. Now that claim 37 has been changed to a liquid beverage claims 40-41 are allowable.

Claim 65 a method claim for improving the cardiovascular health of a mammal was rejected as anticipated by Ringe. Applicant appreciates Examiner's phone conversation that this claim would be patentable if the invention was a liquid. Applicant has followed Examiner's advice and

amended the claim to be a liquid beverage method. Applicant understands that this change makes the claim allowable and obviates the objection. Applicant does not believe this is double patenting with claim 37 which mentions a health benefit of improving at least one medical condition which could be cardiovascular disease. If Examiner disagrees, then applicant wishes to drop the medical condition “cardiovascular diseases” in claim 37 and continue with cardiovascular claims in claim 65.

Claim 65 refers to “improving” the cardiovascular health of a mammal and “improving” at least one condition associated with increased cardiovascular risk. Applicant believes this is definite if Examiner disagrees, applicant requests constructive assistance and notes the word “treating” could replace “improving.”

Claims 67-69 were rejected as being dependent on a rejected independent claim (65). Applicant appreciates Examiner’s phone conversation that this claim would be patentable if the invention was a liquid. Applicant has followed examiner’s advice and made claim 65 a liquid beverage. Additionally, claim 67 also was also rejected as anticipated by Ringe due to the invention containing solid food products as part of the claim. Claim 67 has been amended to remove solid food products, and instead invention now involves liquid and semisolid food products. Applicant appreciates examiner’s phone conversation saying that semisolid food products would be patentable. Claim 65 is allowable and therefore the rejections of claims 67-69 are obviated and allowable. If for any reason these claims are rejected by the examiner, applicant requests constructive assistance to make them acceptable to both the examiner and the applicant.

Claim 70 a method claim for improving the health of a mammal by using applicants invention to remove toxins was rejected as anticipated by Ringe. Applicant appreciates Examiner’s phone conversation that this claim would be patentable if the invention was not a solid food product. Applicant has followed Examiner’s advice and amended the claim to be a liquid beverage method. Applicant understands that this change makes the claim allowable and obviates the objection.

Claim 70 has been rewritten as the term toxins did not support the written specification fully. The term heavy metals, have been added and are found in the original specification on page 8.

The term carcinogens can be found on pages 8, 14, 39 and 62. This amended version more closely follows the specification. Applicant notes that this claim contains 2 markush groups, if this prevents patentability, Applicant requests constructive assistance to make the claim allowable. If for any reason Examiner wishes to object or reject any part of this claim, Applicant respectfully requests constructive assistance to make the claim allowable.

Claim 71 was objected to as being dependant on a rejected independent claim. Applicant has corrected claim 70 so it is allowable, therefore claim 71 should be allowable.

Claim 72 was rejected by examiner as being anticipated by Ringe. Applicant has removed the references to a solid food product so that it now reads a semisolid food product. Based on phone conversation with Examiner, Applicant understands that removing the solid food product claim makes the claim allowable. Applicant understands he can resubmit a solid claim with amendment to the pending divisional claim or as a patent in continuation or patent in part. Claim 72 teaches a method whereby ingested toxins, heavy metals, and carcinogens can be removed by ingesting Applicant's semisolid food product along with additional liquid to further hydrate the fiber.

Claims 73-74 were objected to as being dependant on a rejected independent claim. Applicant has corrected claim 70 so it is allowable, therefore claims 73-74 should be allowable. Applicant requests constructive assistance with lengthy claim 74 if Examiner objects or wishes to reject the claim.

Claim 64 was previously accepted. This claim was amended to replace the word "edible" with "potable". This change was made to improve grammar. Potable is a more correct term in referring to a drinkable liquid, than the word "edible".

Claims 28, 38, 39, 64, 66, 67, 71, and 72 were amended to change the term "edible" liquid to "potable" liquid which is more grammatically correct.

Claims 32-33, 38, 66, and 71 were objected to by the examiner as being dependent on a rejected base claim. The independent claims they are dependent on have been corrected and the rejection should be removed, making these claims allowable.

APPLICANT'S INVENTION

Applicant's invention is orally administered nutritional supplement for ingestion by mammals containing at least 7 grams of fiber per serving comprising a mixture guar, oat, and psyllium fibers, and at least one flavoring agent, and admixed with at least one potable liquid to create a beverage.

Applicant's novel physical structure including specific fibers with specific physical characteristics allows for applicant's supplement to be delivered in a beverage, semisolid, or solid form. (Applicant has withdrawn solid claims at the advice of Examiner, and will pursue a solid claim under a divisional patent, patent in part, or patent in continuation.)

Applicant's invention is novel in that its physical structure allows a mammal to consume more than 7 grams of fiber per serving in safe, easy, convenient and palatable manner without significant side effects.

Applicant's invention is novel in that its physical structure allows a mammal to consume ultra-high fiber (at least 7 grams per serving) without the need to replace minerals and nutrients that high fiber is known to sequester or block the absorption of.

Applicant's invention is novel in that it provides many new uses. Applicant's invention provides many unique health benefits including dramatic weight loss, and reduction in cardiovascular disease. Applicant's invention also reduces the risk of acquiring or improves certain cancers (now pursued in divisional patent), heart disease, glucose intolerance, diabetes, metabolic syndrome, hypertension, osteoporosis, constipation, diverticulosis, hemorrhoids, irritable bowel, homocysteinemia, dyslipidemia, hypertriglyceridemia, and high sensitivity C-

reactive protein (cardiac inflammation). Applicant's invention can be used to help prevent absorption and speed elimination of ingested toxins, heavy metals, and carcinogens.

Applicant, a board certified internal medicine physician has documented dramatic lipid, cholesterol, and cardiovascular benefits with applicant's invention. Applicant's invention dramatically improves a mammal's lipid and cholesterol profile. These improvements could not have been anticipated by current scientific knowledge of fiber. Applicant, has documented marked reduction in risk of cardiovascular disease in numerous patients, and non-patient users who have communicated with applicant. This information has been documented and submitted previously as a Rule 132 Declaration. Applicant has documented reversal of metabolic syndrome, spectacular weight loss, and improvement in all lipid parameters as well as non-lipid cardiac risk factors homocysteine and high sensitivity C-reactive protein. Applicant has documented new and unexpected results in improvement of lipid parameters. American doctors are taught to observe national guidelines for treatment of lipid disorders. These guidelines are based on the National Cholesterol Education Program Adult Treatment Program III guidelines (NCEP ATP III 2001 V 20-21). NCEP ATP III teaches that 5-10 grams of soluble fiber only can lower LDL by 5% (NCEP ATP III V20-21). **Applicant has documented LDL cholesterol drops of over 100 points and reductions of up to 60%. It is unexpected to achieve a 60% reduction in LDL cholesterol when national guidelines teach only 5% reduction.**

Applicant wishes to stress that applicant's nutritional supplement provides new and unexpected uses including dramatic cholesterol/lipid improvement. This could not have been anticipated by Ringe and applicant wishes to stress:

1. Ringe teaches 5%-20% reduction but it is not in LDL cholesterol, but rather the near-meaningless total cholesterol number.
2. Ringe's invention alone cannot even demonstrate any cholesterol improvement. Ringe required a low fat, low cholesterol diet in order to show improvement!
3. Ringe does not teach triglyceride reduction. Applicant has documented triglyceride reductions of up to 82%!

Applicant's invention has resulted in lowering of LDL by 60%, triglyceride reductions of up to 82% and elevations of HDL by up to 56%. Additionally, applicant has demonstrated invention

can improve a person with the worst quintile (Q5) of high sensitivity C-reactive protein to the best quintile (Q1).

Applicant's invention is novel in that it provides dramatic weight loss without a mammal having to diet or exercise. Applicant's novel physical structure and composition allows for both an immediate and a long lasting satiety that reduces caloric intake in the meal that follows and reduces or eliminates snacking for several hours.

CONCLUSION


For all of the above reasons, applicant submits that the specification and claims are now in proper form, and that the claims all define patentably over the prior art. All claims recite novel and unobvious subject matter over Ringe . Applicant has addressed all of Examiner's objections and rejections in order to make the current claims and application patentable. At Examiner's advice applicant has withdrawn claims to a solid comestible and will pursue this under the divisional application or patent in continuation or patent in part. Applicant's nutritional product can be a liquid beverage or a semisolid comestible. Applicant's independent claims show the invention as potable liquid. Applicant notes that the potable liquid can be admixed to form a semisolid comestible.

CONDITIONAL REQUEST FOR CONSTRUCTIVE ASSISTANCE

Applicant has made diligent effort to amend the claims of this application so that they are proper, definite, and define novel structure which is also unobvious. If, for any reason , the Examiner believes that the claims of this application are not yet in full condition for allowance, applicant respectfully requests his constructive assistance and suggestions pursuant to the spirit of MPEP Sec. 2173.02 and 707.07. This will enable the undersigned to place this application in fully

allowable condition as soon as possible and without the need for further proceedings. Applicant authorizes the Examiner to make any needed minor corrections or changes.

Very respectfully,


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Enc:

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I hereby certify that this correspondence, and attachments will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to Commissioner of Patents, Washington DC 20231 on the date below.

Date: June 22, 2005

Inventor's Signature

